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**MINUTES OF THE HEARING ON THE PETITION
OF WALKER REALTY LLC, 348-364 MAIN STREET**

HEARING #12-01

A public hearing of the Acton Board of Appeals was held on Wednesday, January 11, 2012 at 7:30 pm on the petition of Walker Realty LLC for a PETITION FOR REVIEW under Section 10.1.1 of the Acton Zoning Bylaw to appeal the decision of the Zoning Enforcement Officer determining that a building permit may not be issued for a proposed child care center and agricultural use to be constructed on the premises located at 348-364 Main Street. Map F-3, Parcels 54, 61, 61-1 32 and 33.

Present at the hearing were Board Members, Ken Kozik, Chairman; Marilyn Peterson, Member; Adam Hoffman, Alternate Member; Scott Mutch, Zoning Enforcement Officer; Cheryl Frazier, Board of Appeals Secretary; Nina Pickering-Cook, (associate) Town Counsel; Walker Realty's counsel James Burgoyne of Fletcher, Tilton & Whipple, P.C., representative from Hancock Associates, Elizabeth Ahern of Walker Realty. Also present at the hearing were a large number of concerned citizens and abutters to the property.

Ken Kozik opened the hearing, and listed the contents of the file.

On December 5, 2011 Walker Realty submitted a site plan to the ZEO and requested a determination from him confirming that he would not issue a building permit for this child care facility because of noncompliance with the Bylaw. On December 20, 2012 the ZEO issued that confirmation, denying a building permit on the grounds that the facility would violate the maximum NFA and parking and driveway design regulations of the Bylaw. See Zoning Determination Letter dated December 20, 2012.

The Bylaw permits child care facilities without site plan review in any zoning district. However, in the R-2 district, it limits child care facilities to 2,500 square feet net floor area ("NFA") and 0.10 floor area ratio ("FAR") and requires at least 35% open space. The Bylaw does not limit floor area for residences in the R-2 district. Section 6.7.3 requires that each lot have one access driveway 24 feet wide, unless the ZEO concludes that more or wider driveways are necessary for safety. Section 6.7.7 requires that at least 10% of the interior area of a parking lot cell with at least 25 spaces must be landscaped islands.

Walker Realty proposes to build a one-story facility for approximately 262 children and will be known as Next Generation Children's Center. The child care facility would be located on the northeast portion of the lot, with its access drives almost across the street from the Acton Public Safety Facility. Based on the

site plan submitted to the ZEO, Walker Realty calculated that the proposed child care building would be 19,460 NSF. Walker Realty also proposes to demolish the existing Kennedy building and build a new one story building of 600 NSF. This building would be located on the lot closest to Route 2. The lot, as proposed would have approximately 30% of open space and a FAR of 0.10.

Walker Realty also proposes four parking cells with a total of 92 parking spaces and two access drives to service the child care facility and one parking cell with 15 spaces and one access drive to Service Kennedy's. One of the proposed parking cells has 26 spaces, requiring 10% of the interior area of that cell to be landscaped pursuant to Acton Zoning Bylaw Section 6.7.7; that cell does not have any interior landscaping. Each of the access driveways is wider than 24 feet where it intersects Main Street.

Mr. Burgoyne Counsel for Walker Realty was asked to make his presentation. He began by stating they are here to seek the Boards determination as summarized by the Chairman. On December 5, 2011, Walker Realty submitted a site plan, floor plans, and net floor area diagrams to the ZEO and requested a determination of compliance with the Acton Zoning Bylaw. On December 20, 2011 the ZEO issued a determination that the proposed plans did not comply with the Zoning Bylaw on the grounds that the facility would violate the maximum NFA, open space and parking and driveway design regulation of the Bylaw. See letter dated December 20, 2011.

Walker Realty appealed that denial to the Board. The Board held a hearing on January 11, 2012. Walker Realty presented a history of the proposed development of this site for a child care facility, dating back to 2009, and the current plans for the facility. No one else spoke in support of the appeal, either in person during the hearing or in writing. Dozens of neighbors and other residents spoke and submitted letters in opposition to it. Among the comments by Town staff and departments were a Planning Department memorandum, all expressing concerns about the impact of the proposed facility, particularly to traffic on Main Street.

During the hearing, Walker Realty's counsel stated that the violation of Section 6.7.7 (parking cell landscaping) was an oversight, as the cell was intended to have only 25 spaces (negating the application of Section 6.7.7). He stated that the plans for the facility would be altered to reflect that intention, eliminating one parking space and thereby eliminating the violation of Section 6.7.7.

Ken opened up comments from the public.

Several abutters spoke with concerns of traffic impact and safety concerns for the site.

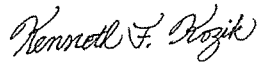
Ken asked Adam and Marilyn if they had any further comment. They did not.

The Board moved to close the hearing.

The Board voted **3-0 to UPHOLD** THE ZEO's zoning determination that the child care facility proposed by Walker Realty violated the NFA limit of 1500 square feet in Section 5.3.9 of the Acton Zoning Bylaw. It voted **3-0 to OVERTURN** that denial insofar as it was based on the Bylaw's driveway design regulation and minimum open space requirement.

Ken Kozik to write the decision.

Respectfully submitted,



Kenneth F. Kozik
Chairman, Board of Appeals



Cheryl Frazier
Secretary, Board of Appeals